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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/821,371	03/29/2001	H. Benjamin Diaz	ECCENT.003RA	3448

20995 7590 12/30/2002

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[REDACTED] EXAMINER

COSIMANO, EDWARD R

[REDACTED] ART UNIT

[REDACTED] PAPER NUMBER

3629

DATE MAILED: 12/30/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/821,371	DIAZ ET AL.	
<b>Examiner</b>	<b>Art Unit</b>		
Edward R. Cosimano	3629		

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 2 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 15 October 2002.

2a) This action is **FINAL**.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 1-16,19-28,30-40,43-48 and 50-86 is/are pending in the application.

4a) Of the above claim(s) none is/are withdrawn from consideration.

5) Claim(s) 1-16,19-28,30-40,43-48 and 50-86 is/are allowed.

6) Claim(s) \_\_\_\_\_ is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 29 March 2001 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All b) Some \* c) None of:  
1. Certified copies of the priority documents have been received.  
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____	6) <input type="checkbox"/> Other: _____

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1. Applicant should note the changes to patent practice and procedure:
  - A) effective December 01, 1997 as published in the Federal Register, Vol 62, No. 197, Friday October 10, 1997; and
  - B) effective November 07, 2000 as published in the Federal Register, Vol 65, No. 54603, September 08, 2000.
2. The following has been noted by the examiner:
  - A) since U.S. Patent has not been assigned, the assent by the assignee/inventors has been received in the form of a reissue declaration as required by 37 CFR § 1.172(a).
  - B) the offer to surrender the original patent has been received pursuant to 37 CFR § 1.178(a).
  - C) the reissue seeks to broaden the claims.
  - D) the reissue application has been filed within 2 (TWO) years.
  - E) the reissue declaration sets forth at least one error as required by 37 CFR § 1.175(b)(1) that is corrected by the reissue.
  - F) the reissue declaration filed March 29, 2001 complies with 37 CFR § 1.175(a)(2).
3. The specification and drawings have not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification or drawings. Applicant should note the requirements of 37 CFR § 1.74, § 1.75, § 1.84(o,p(5)), § 1.121(a)-1.121(f) & § 1.121(h)-1.121(i).
4. The original patent, or a statement as to loss or inaccessibility of the original patent, must be received before this reissue application can be allowed. See 37 CFR 1.178.
5. This application is in condition for allowance except for the following formal matters:
  - A) See above.

5.1 Prosecution on the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

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5.2 A shortened statutory period for reply to this action is set to expire **TWO MONTHS** from the mailing date of this letter.

6. The following is an Examiner's Statement of Reasons for indicating Allowability over the prior art:

A) the prior art for example either:

(1) Barron (3,984,666) which discloses determining the calories burned during exercise; or

(2) Brouns et al (EPO 0537113 A1) which disclose the need to replace nutritional supplements expended during exercise; or

(3) Sugarman et al (5,796,640) which disclose a dietary aid to aid the user in determining the nutritional value of various items; or

(4) Goldberg which disclose a connection between the nutritional intake of a person over a period of time and the suggesting exercise.

B) however, in regard to claims 1 & 15, the prior art does not teach or suggest the use of both nutrition and exercise menus to select nutritional intake values and calories burned during exercise. Claims 2-14 are allowable for the same reason.

C) however, in regard to claims 2, 15, 16, 40 & 55 the prior art does not teach or suggest the use of a wireless communications link to enter exercise data. Claims 19-28, 30-35, 37-39, 43-48, 50-54 & 75-85 are allowable for the same reason.

D) however, in regard to claims 13, 15, 36 & 55 are the prior art does not teach or suggest the use of a password to access and/or create the user data. Claims 56-85 are allowable for the same reason.

E) however, in regard to claim 86, the prior art does not teach or suggest suggesting a weight based on user entered values for sex, frame, lifestyle, height and age.

6.1 Any comments considered necessary by applicant must be submitted no later than the payment of the Issue Fee and, to avoid processing delays, should preferably **accompany** the Issue Fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

7. Response to applicant's arguments.

7.1 All rejections and objections of the previous Office action not repeated or modified and repeated here in have been over come by applicant's last response.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edward Cosimano whose telephone number is (703) 305-9783. The examiner can normally be reached Monday through Thursday from 7:30am to 6:00pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss, can be reached on (703)-308-2702. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-1113.

- 8.1 The fax phone number for UNOFFICIAL/DRAFT FAXES is (703) 746-7240.
- 8.2 The fax phone number for OFFICIAL FAXES is (703) 305-7687.
- 8.3 The fax phone number for AFTER FINAL FAXES is (703) 308-3691.

12/28/02

*Edward Cosimano*  
Edward R. Cosimano  
Primary Examiner A.U. 3629